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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,918	04/08/2004	Brian C. Case	1000-008	8766
42715 7590 10/22/2008 BUCHANAN INTELLECTUAL PROPERTY OFFICE LLC P.O. BOX 700 PERRYSBURG, OH 43552-0700				
EXAMINER				
PREBILIC, PAUL B				
ART UNIT		PAPER NUMBER		
3774				
MAIL DATE		DELIVERY MODE		
10/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,918

Applicant(s)

CASE ET AL.

Examiner

Paul B. Prebille

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-16, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 4-9, 12, 15, 30 and 31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 10, 11, 13, 14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Election/Restrictions

Claims 4-9, 12, 15, and 30-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 31, 2007.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, 10, 11, 13, 14, and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 10, 11, 13, 14, and 16, in the last subparagraph of base claim 1, the limitation "each of the first, second and third widths comprises a width of at least one the struts measured on an axis . . . " is not understood because of the underlined portion. This language could be changed to "wherein each of the first, second, and third widths being measured on an axis . . . " in order to overcome this rejection. It is noted, however, that the transverse axis need not be perpendicular to the lengthwise axis so the language is broad and reads on the structure of Pavcnik.

Regarding claim 3, it is now dependent upon cancelled claim 2 and so its scope can not be determined. For this reason, it will not be evaluated on its merits.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 10, 11, 13, 14, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Pavcnik et al (WO 99/62431). Pavcnik anticipates the claim language where:

- the frame as claimed is the frame (11) of Pavcnik (see Figures 10 to 17); the first portion as claimed is the straight portion of the frame (11), and the second and third portions as claimed are the fillet (42) or curves (63) on either side thereof (see Figures 5 or 11); the widths of the second and third portions are taken at a 45 degree angle (Figure 11) or perpendicular to the frame plane (see Figure 5) with respect to the axis of the strut taken at any point; with this understanding, the widths of the second and third portions are clearly greater than the straight sections;
- the graft as claimed is the covering (57); see Figure 15;

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- the attachment element as claimed is the suture (50); see page 7, line 30 to page 9, line 7.

With regard to claims 13 and 14, the Applicants are directed to page 8, lines 7-9 of Pavcnik.

With regard to claim 16, the angle as claimed can be zero degrees and still fall within the scope of the claims.

Response to Arguments

Applicant's arguments filed July 25, 2008 have been fully considered but they are not persuasive.

The Applicant argues that Pavcnik does not teach relatively narrow first strut portions between relatively wider second and third strut portions. However, since the transverse axis need only be transverse to the lengthwise axis, the claim language is still fully met. In other words, transverse is merely means lying across and does not require any particular angle with respect to what the object crosses. The transverse angle can be at 45 degrees with respect to the strut axis. A 45 degree angle would result in certain Pavcnik embodiments reading on the claimed invention. Moreover, the concept of wider bent sections for serpentine stents was known to the art at the time the invention was made; see Lenker (US 2002/0177890) at Figures 1B, 3B, and 8 as well as paragraph [0045]. Chuter teaches the concept of wider bend portions as well.

In response to the traversal of the Chuter rejection that Chuter does not teach wider strut portions at bends in the serpentine path, the Examiner

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disagrees and asserts that bends "in the path" are at the ends of the attachment stent (40); see Figure 1.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 of 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/
Paul Prebilic
Primary Examiner
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